

**MORTGAGE RECOVERY LAW GROUP LLP**

MICHAEL H. DELBICK (State Bar No. 139200)

PAUL A. LEVIN (State Bar No. 229077)

LAUREN M. GIBBS (State Bar No. 251569)

700 North Brand Boulevard, Suite 830

Glendale, California 91203

NOTE: CHANGES MADE BY THE COURT

Telephone: (818) 630-7900 ♦ Facsimile: (818) 630-7920

E-mail: michael.delbick@mortgagerecoveries.com

paul.levin@mortgagerecoveries.com

[lauren.gibbs@mortgagerecoveries.com](mailto:lauren.gibbs@mortgagerecoveries.com)

**SNIPPER, WAINER & MARKOFF**

MAURICE WAINER (California Bar No. 121678)

1180 S. Beverly Drive, Suite 320

Los Angeles, California 90035

Telephone: (310) 550-5770 ♦ Facsimile: (310) 550-6770

E-mail: mrwainer@swmfir.com

**Attorneys for Plaintiff Federal Deposit  
Insurance Corporation as Receiver for  
AmTrust Bank,**

**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION**

FEDERAL DEPOSIT INSURANCE  
CORPORATION as Receiver for  
AMTRUST BANK

Plaintiff,

vs.

EMERY FEDERAL CREDIT  
UNION, a federally-chartered credit  
union, EMERY FINANCIAL  
SERVICES, INC., an Ohio  
corporation,

Defendants.

Case No. SACV 14-251 JVS JPRx

Magistrate Judge: Jean P. Rosenbluth

**DISCOVERY MATTER -  
STIPULATION FOR PROTECTIVE  
ORDER**

1 This case, brought by the Plaintiff, the Federal Deposit Insurance Corporation  
2 (“FDIC”), in its capacity as Receiver for AmTrust Bank (“FDIC-R”), necessarily  
3 involves confidential bank information and personally identifiable information of  
4 borrowers that are generally protected from disclosure under federal and state laws  
5 and cannot be disclosed absent a protective order. Accordingly, because of the strict  
6 laws governing the disclosure of such information, a protective order is necessary in  
7 order to protect the information, the parties, and others who may need to be exposed  
8 to or review the information. Defendants, Emery Federal Credit Union and Emery  
9 Financial Services, Inc., each appearing through their respective counsel of record,  
10 consent to the entry of this Order.

11 Now therefore, for good cause existing, the parties to this Stipulation hereby  
12 stipulate as follows:

13 **1. Scope of Protective Order.** The parties contemplate that in the  
14 course of this litigation they may produce to one another certain Confidential  
15 Documents, as defined below, or portions of Confidential Documents in their  
16 possession. The term “Document” is comprehensively defined to be synonymous in  
17 meaning and equal in scope to the usage of the term in Rule 34(a) of the Federal  
18 Rules of Civil Procedure, which defines document to include writings, drawings,  
19 graphs, charts, photographs, phone records, and other data compilations from which  
20 information can be obtained, including electronically stored information. The term  
21 “Confidential Documents” shall specifically include, but not be limited to:

22 (a) *Regulatory Information:* Confidential Documents related  
23 in any way to the regulation or supervision of AmTrust Bank (“Bank”),  
24 in whatever form, whether preliminary or final, including reports of  
25 examination or inspection, regulatory correspondence, reports, orders,  
26 memoranda, or agreements by, from or with the FDIC, the Board of  
27 Governors of the Federal Reserve System, the Office of Financial and  
28

1 Insurance Regulation (“OFIR”), or any other federal or state regulatory  
2 authority, and any documents containing confidential or privileged  
3 information obtained from any documents or records related to the  
4 supervision or regulation of the Bank. No regulatory documents,  
5 however obtained, will be disclosed to anyone other than Defendants  
6 and other persons or entities identified in paragraph 4 below without  
7 prior approval by the respective regulatory authority or a court order.  
8 Confidential Documents also include documents that are privileged,  
9 confidential, or exempt from disclosure as provided in the Freedom of  
10 Information Act, 5 U.S.C. § 552 (“FOIA”), the regulations governing  
11 the disclosure of information, 12 C.F.R. Parts 261 and 309, the laws of  
12 the State of California, or any other applicable federal or state laws.

13 (b) *Bank and Bank Customer Information:* Confidential  
14 Documents related to the Bank, its customers, or any trading company  
15 involved in placing orders for commodities futures or options,  
16 including but not limited to: Automated Clearing House items or  
17 transactions, chargebacks, merchant processing, bank account  
18 information, customer bank records, signature cards, bank statements,  
19 general ledger entries, deposit or reserve information, commodity  
20 trading statements, loans and lending transactions, loan applications,  
21 financial statements and credit reports, business and personal state and  
22 federal income tax forms, correspondence, and loan documentation  
23 relating to any extension of credit or loan to any borrower. Examples  
24 of Confidential Documents also include, without limitation, documents  
25 containing a Bank customer’s name, address, social security number,  
26 date of birth, account number, credit card number, personal  
27 identification number, account balance, information relating to a  
28

1 deposit account, loan or borrower relationship, loan application  
2 materials, or any other identifying information.

3 (c) *Receivership Information:* Confidential Documents  
4 related to the receivership of the Bank, including any information on  
5 loss or estimates of such loss on the Bank's assets that is not publicly  
6 available. Notwithstanding the provisions of paragraph 4 of this  
7 Protective Order, no Confidential Documents shall be disclosed to any  
8 person or entity known to have any current or prospective interest in  
9 such assets, whether or not that person or entity would otherwise be  
10 allowed access to documents and information under the terms of this  
11 Order. Notwithstanding the foregoing, nothing in this Protective Order  
12 shall preclude disclosure to a party or its attorneys.

13 (d) *Trade Secret/Proprietary Information:* Documents and  
14 information that the producing party reasonably believes constitute,  
15 reflect, or disclose trade secrets, proprietary data or commercially  
16 sensitive information.

17 (e) *Personnel Documents.* Personnel Documents concerning  
18 current or former employees of a party, to the extent discoverable, shall  
19 be deemed and designated as Confidential Information. Nothing in this  
20 Protective Order shall impact whether Personnel Documents or  
21 information sought from personnel files are discoverable.

22 Irrespective of any confidential designation by a producing party, this Protective  
23 Order shall not apply to any documents independently obtained from a non-party on  
24 an unrestricted basis.

1                   **2. Manner of Designation.** The parties shall designate  
2 Confidential Documents by stamping or otherwise marking the confidential portions  
3 of them with the legend “Confidential Documents Subject to Protective Order” or  
4 similar language. Any document marked in this manner by either party shall be  
5 subject to this Order.

6                   **3. Disclosure of Confidential Documents Prohibited.**  
7 Confidential Documents shall be used only for the purpose of this action and for no  
8 other purpose. Except as provided by the express terms of this Protective Order, all  
9 persons subject to this Order shall refrain from disclosing in any manner any  
10 information set forth in any Confidential Documents. The transmission of  
11 Confidential Documents between the FDIC in its capacity as Receiver for the Bank  
12 and the FDIC acting in any other capacity shall not constitute disclosure for  
13 purposes of this Order. Any such Confidential Documents transmitted among  
14 various capacities of the FDIC shall remain subject to this Order and its prohibition  
15 on disclosure.

16                   **4. Exceptions to Prohibition on Disclosure.** Counsel for a party  
17 to this action may disclose Confidential Documents to the following persons, to the  
18 limited extent such disclosure is necessary, under the following specified  
19 circumstances:

20                   (a) Officers or employees of any party in this action who are  
21 assisting counsel in the prosecution or defense of this action to the  
22 extent necessary for such assistance (including, but not limited to, the  
23 parties’ attorneys, investigators, paralegals and other employees);

24                   (b) Personnel of or counsel to any insurance company that  
25 issued any insurance policy under which Defendants are an insured and  
26 under which coverage is being provided for this matter (including, but  
27 not limited to, the Board of Directors, in-house attorneys, outside  
28

1 attorneys, investigators, experts, consultants, senior executives, and  
2 employees of any such insurance company) conducting, assisting,  
3 monitoring, reviewing, or making determinations with regard or  
4 related to the litigation, provided that each such person signs a written  
5 agreement to be bound by this Order in the form attached as Exhibit A;  
6 and reinsurers, auditors, or regulators to which any such insurance  
7 company is required to respond or report in the ordinary course of  
8 business regarding the subject matter of this litigation, but only so long  
9 as such persons or entities are already subject to substantially similar  
10 confidentiality obligations;

11 (c) As to the FDIC-R: (i) auditors or examiners required or  
12 authorized by law to review materials that may include Confidential  
13 Material; (ii) persons to whom the information is required to be made  
14 available under FOIA or the FDIC's FOIA regulations, 12 C.F.R.  
15 309.5, upon receipt of a proper FOIA request for such information; and  
16 (iii) individuals and entities permitted access to exempt information  
17 under 12 C.F.R. 309.6;

18 (d) Persons specially retained by any of the attorneys or  
19 parties to this action to assist in the preparation of this action, including  
20 but not limited to vendors, experts, consultants, mediators and  
21 arbitrators, provided that such persons require access to the  
22 Confidential Documents or information in order to perform the services  
23 for which they have been retained and provided that each such person  
24 signs a written agreement to be bound by this Order in the form  
25 attached as Exhibit A;

26 (e) Any person of whom testimony is to be taken in this  
27 litigation, provided that such a person may only be shown Confidential  
28

1 Documents to the extent necessary for such testimony and provided  
2 that such person is apprised of the confidential nature of the documents  
3 pursuant to Paragraph 5, below; and

4 (f) Court reporters to the extent necessary for them to record  
5 testimony at deposition or court proceedings.

6 **5. Counsel's Obligation to Inform.** Prior to disclosing  
7 Confidential Documents to any person pursuant to paragraphs 4(a)-(e), counsel  
8 shall:

9 (a) Apprise that person of the confidential nature of the  
10 documents;

11 (b) Apprise that person that this Court, pursuant to this Order,  
12 has restricted the use of such documents; and

13 (c) Show that person a copy of this Order, specifically  
14 informing him of the contents of this Paragraph.

15 **6. Non-waiver of Privilege; Inadvertent Disclosure.** By agreeing  
16 to the procedures in this Order, the parties do not waive any legal right or privilege  
17 applicable to either the Confidential Documents or to any other request of, or  
18 discovery procedure available to, the parties to this action. Further, inadvertent  
19 disclosure of any privileged document in the course of discovery in this action shall  
20 not constitute waiver of any applicable legal right or privilege. In the case of any  
21 such inadvertent disclosure of privileged documents, the receiving party shall,  
22 immediately upon becoming aware of the disclosure, or, if unaware of disclosure,  
23 within five (5) business days of receipt of a written request by the producing party,  
24 return the original to the producing party, destroy all copies thereof, as well as all  
25 notes, memoranda or other documents that summarize, discuss, or quote the  
26 document, and delete any copy of the document, or any portion thereof, from any  
27 word processing database, tape, or disk the receiving party maintains. Return of a  
28



1 document over which the producing party has asserted a claim of privilege,  
2 protection, or immunity under this paragraph shall be without prejudice to the  
3 receiving party's right to seek an order from the Court directing the production of  
4 the document on the ground that the claimed privilege, protection, or immunity is  
5 invalid or inapplicable; provided, however, that mere production of the document or  
6 information in the course of this action shall not constitute grounds for asserting  
7 waiver of the privilege, protection, or immunity.

8           **7. Confidential Documents to Be Filed Under Seal.** In the event  
9 counsel for any of the parties wishes to file or submit to this Court any Confidential  
10 Documents (by way of pleadings, motions, briefs or any other papers or oral  
11 communication containing or making reference to such document or information),  
12 counsel shall file the appropriate motion to seal in accordance with the procedures  
13 outlined in the Local Rules for the Central District of California, including Local  
14 Rule 79-5, and the party must seek leave of court before filing any Confidential  
15 Documents.

16           **8. Objections to Confidential Designation.** If any party objects to  
17 the designation of a particular document as confidential, the objecting party shall  
18 give written notice of its objection to the designating party. If, within ten (10) days  
19 from receipt of written notice, the parties have not reached an agreement concerning  
20 confidential status of the documents, the objecting party may apply to the Court  
21 under Local Rule 37 for a ruling that the documents not be considered confidential  
22 and be deemed not subject to this Order. Until such time as the Court has ruled on  
23 the objecting party's application, all parties shall continue to treat the document as  
24 confidential pursuant to the terms of this Order. In any event, no confidential  
25 document or information shall lose its confidential status through its use in  
26 connection with any dispute over its confidential status, and the parties shall take all  
27  
28



1 steps reasonably necessary to protect the confidentiality of such document during its  
2 use.

3               **9. Violation of this Order.** If a party has cause to believe that a  
4 violation of this Order has occurred or is about to occur, that party may petition this  
5 or any other proper court for appropriate relief. To the extent any party feels the  
6 protections of this Order are not adequate for particular Confidential Documents or  
7 information, that party may petition the Court for an appropriate amendment to this  
8 Order. Any such requests must be made in compliance with Local Rule 37.

9               **10. Production of Confidential Documents in Response to**  
10 **Subpoena or in Connection with Judicial Proceedings.** Nothing in this Order  
11 shall prohibit any party from using or disclosing Confidential Documents in  
12 response to a subpoena or court order seeking production of Confidential  
13 Documents or in connection with a criminal or administrative investigation by any  
14 government or governmental body, grand jury proceedings, or the trial or pretrial  
15 procedures and preparation of a criminal or administrative case.

16               **11. Return or Destruction of Confidential Documents.** At the  
17 conclusion of this action, all Confidential Documents and copies thereof in the  
18 possession, custody or control of the parties shall be either returned to the producing  
19 party or destroyed. All notes, memoranda, summaries or other documents in the  
20 possession, custody or control of the parties referring to, describing, or relating to  
21 Confidential Documents shall be destroyed, except that counsel to each party may  
22 retain one copy of pleadings, transcripts, exhibits, notes, memoranda, and  
23 correspondence even if such documents constitute or contain confidential  
24 information. Such material retained by counsel shall continue to be subject to the  
25 terms and conditions of this Protective Order, and shall be returned to the producing  
26 party or be destroyed upon the expiration of the applicable statute of limitations for  
27 claims related to that counsel's representation of the receiving party.  
28

1                   **12. Other Provisions.** This Protective Order shall be binding upon  
2 the parties hereto from the date of execution, notwithstanding the date of entry of  
3 this Order by the Court.

4                   This Protective Order shall not be amended, modified, or terminated without  
5 prior written notice to all counsel or by Order of the Court.

6  
7  
8 **RESPECTFULLY SUBMITTED BY:**

9       Lauren M. Gibbs  
10       MORTGAGE RECOVERY LAW  
11       GROUP LLP  
12       700 N. Brand Blvd., Suite 830  
13       Glendale, CA 91203

      Greta T. Hutton  
      KNAPP, PETERSON & CLARKE  
      550 N. Brand Blvd., Suite 1500  
      Glendale, CA 91203

12       By: /s/ Lauren M. Gibbs

      By: /s/ Greta T. Hutton

13       Dated: November 18, 2014

      Dated: November 20, 2014

14       Attorneys for Plaintiff

      Attorneys for Defendants

15  
16  
17  
18                   **IT IS SO ORDERED.**

19  
20       Date: December 8, 2014

  
      \_\_\_\_\_  
      HON. JEAN P. ROSENBLUTH  
      UNITED STATES MAGISTRATE JUDGE

